State of California

Board of Equalization
Legal Department – MIC: 83
Office of the Chief Counsel
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Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: November 3, 2014

From: Randy Ferris
Chief Counsel

Subject: **Other Chief Counsel Matters – November 19, 2014**
Item Number M_ – Request for Authorization to File *Amicus Curiae* Brief

Gunter Seibold v. County of Los Angeles Assessment Appeals Board, et al.
Second District Court of Appeal, Division 3, No. B253701
(Los Angeles County Superior Court Case No. SC107640)

AUTHORIZATION SOUGHT TO FILE AN AMICUS BRIEF IN RESPONSE TO QUESTIONS POSED BY THE SECOND DISTRICT COURT OF APPEAL

This memorandum asks for Board authorization to file an amicus curiae brief (amicus brief) in the above-referenced appeal in response to a request by the Second District Court of Appeal in a letter to the Board of Equalization (Board) dated October 17, 2014. (See Attachment 1.) The Court has requested that the Board, as a prospective amici curiae, advise it of its intent to file an amicus brief by December 1, 2014.

Issue Presented. The Court of Appeal has framed the issue before it as whether or not a privately owned improvement on public land that is owned by a land-lease tenant is subject to property tax as a taxable possessory interest in tax-exempt real property under Revenue and Taxation Code[1] section 107 and Property Tax Rule[2] 20, subdivision (a)(3).

Relying on a provision contained in Assessors' Handbook section 510, *Assessment of Taxable Possessory Interests* (December 2002) (AH 510), at page 6, the trial court ruled against the Los Angeles County Assessor and in favor of the lessee, Gunter Seibold, finding that the improvement did not constitute a part of the taxable possessory interest, and was, thus, not taxable. Now, the matter is before the Court of Appeal. The Court of Appeal has asked the Board to address a number of specific questions as they relate to this case. (See Attachment 1, p. 4.) Our proposed response to these discrete questions will be consistent with our comments and recommendations on the issues discussed below.

[1] All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.
[2] All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations.

Background Information. All property is subject to property tax unless exempt. (Cal. Const., art. XIII, § 1.) The exclusive use or possession of publicly owned real property by a private individual or entity is treated as a possessory interest and is subject to county property taxation. (Cal. Const., art. XIII, § 1; Rev. & Tax. Code, §§ 103, 104, 107; Cal. Code Regs., tit. 18, § 20.)

In the case at issue, Gunter Seibold (Lessee), entered into a lease with the City of Santa Monica to use certain portions of the Santa Monica Airport, a publicly owned facility, for a hangar to store his aircraft. Pursuant to the terms of the lease, Lessee was to construct and maintain a hangar at his own cost and expense on the leased premises. The terms of the lease provide that Lessee is the owner of the hangar and that the hangar would not revert to the airport at the end of the lease term.

Because the lease was for publicly owned land, it apparently created a taxable possessory interest in favor of the Lessee in the tax-exempt land.[3] At issue, however, is whether the hangar, constructed and owned by Lessee on the tax-exempt land, is taxable as part of the possessory interest. If, at the termination of the lease, the hanger is not owned by the airport but instead the Lessee, then it cannot be part of the taxable possessory interest created by the ground lease. Nevertheless, as the hanger is privately owned, it must be taxed to the Lessee as a fee interest in an improvement to real property.[4]

Subdivisions (a) and (b) of section 107 define a possessory interest, in relevant part, as follows:

> "Possessory interests" means the following:
>
> (a) Possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in the property, except when coupled with ownership of the land or improvements in the same person. [¶] . . . [¶]
>
> (b) Taxable improvements on tax-exempt land.

Rule 20, subdivisions (a)(1) and (a)(3) essentially repeat this definition of possessory interest.

In this case, the Assessor applied the provisions of section 107, subdivision (b) and Rule 20, subdivision (a)(3) to include the hangar as part of the taxable possessory interest as a "taxable improvement on tax-exempt land." The Los Angeles County Assessment Appeals Board agreed with the Assessor. Lessee, however, contends that section 107, subdivision (a) and Rule 20, subdivision (a)(1) support his view that the hangar may not be taxed as part of the possessory interest. In further support of his position, Lessee cites AH 510, page 6, which states:

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[3] The Court of Appeal has specifically excluded briefing concerning the ground lease from its request.

[4] If the improvement is assessed separately in fee, it would receive a separate base year value, and a change in ownership of the possessory interest in land would not result in a change in ownership of the improvement. However, if the improvement and land are assessed together as a part of a taxable possessory interest, there would be a single base year value, and a change in ownership of the possessory interest in land would also result in a change in ownership of the improvement. (See AH 510, p. 6, fn. 12.)

> [Rule 20] then states that a possessory interest includes "taxable improvements on tax-exempt land." This refers to privately owned improvements constructed or owned by the possessor (i.e., not the public owner) on the land subject to the taxable possessory interest. According to this provision a possessory interest includes all improvements constructed pursuant to a possessory interest in land *that become the property of the public owner at the termination of the possession*, whether the improvements are constructed at the possessor's or the public owner's expense. *However, improvements owned by the possessor that do not become the property of the public owner at the end of the term of possession fail the ownership test of Rule 20(a)(1) and, thus, are not taxable possessory interests.* [Footnote omitted; italics added.]

Although not taxable as a possessory interest, it appears that Lessee overlooks that under California law, the hanger, as a building or structure, is an improvement to land which is owned by Lessee, and, thus, is separately and independently subject to tax as real property under section 201, which states: "All property in this State, not exempt under the laws of the United States or of this State, is subject to taxation under this code." (See Cal. Const., art. XIII, § 1; Rev. & Tax. Code, § 104 ["'Real estate' or 'real property' includes: [¶] . . . [¶] (c) Improvements"]; Rev. & Tax. Code, §105 ["'Improvements' includes: (a) All buildings, structures, fixtures, and fences erected on or affixed to the land."].) Consequently, even if the hanger does not become the property of the airport at the end of the lease term, and thus cannot constitute a part of the taxable possessory interest in the airport land pursuant to the provisions of section 107 as interpreted by AH 510, it still qualifies as real property that is taxable to the Lessee under California law.

The filing of an amicus brief in this case would allow the Board's Legal Department to explain to the Court of Appeal how California property tax law applies to privately owned improvements on tax-exempt land. The filing of an amicus brief also would permit the Board to explain how the position expressed in AH 510 is consistent with the constitutional, statutory, and judicial requirements of California law, but nevertheless is not determinative in this case as the hanger does not revert to the public owner at the end of the lease term. We also note that if, regardless of ownership, the Court determines in a published opinion that all private improvements on tax-exempt land constitute possessory interests, contrary to the Board's stated position in AH 510, then the Board's guidance materials will have to be corrected to conform.

Analysis of the Issue Before the Court of Appeal

Section 1 of article XIII of the California Constitution requires that all real property be assessed unless exempt. It is well settled that both possessory interests in real property and fee interests in real property are taxable real property interests. (See *People v. Shearer* (1866) 30 Cal. 645 [the possession of public lands are regarded as valuable property interests in California and are recognized as a species of property that must contribute its proper share of the taxes necessary to sustain the government].) The concept of a taxable possessory interest was judicially created and then codified in section 107, as cited above.

A review of judicial decisions determining the taxability of possessory interests on public land demonstrate that the right that creates a separate taxable real property interest is a usufructuary right. (See *State v. Moore* (1859) 12 Cal. 56; see also *Kaiser v. Reid* (1947) 30 Cal.2d 610.) A usufructuary right is "the right of using and enjoying the profits of a thing *belonging to another*, without impairing the substance . . . ." (*Douglas Aircraft Co. v. Byram* (1943) 57 Cal.App.2d

311 (citing *Heintzen v. Binninger* (1889) 79 Cal. 5, 6 (emphasis added)).) Therefore, the use of real property by its owner does not create a usufructuary right, and thus cannot be taxed as a possessory interest. Instead, such property must be taxed in fee to its owner.

Thus, it has been the Board's longstanding position, as explained in AH 510, that the ownership of improvements determines whether the improvement is part of a possessory interest or whether it is separately taxed in fee. This position has also been described in Property Tax Annotation[5] 660.0120 and in Letter to Assessors 1980/048. (See Attachments 2 & 3.)

Ownership of lessee-constructed improvements depends on the terms of the lease, in particular which party keeps the improvement at the end of the lease term. (Civ. Code, § 1013; see 7 Miller & Starr, California Real Estate (3rd ed. 2000) § 19:131; see also *Auerbach v. Assessment Appeals Bd.* (2006) 39 Cal.4th 153 [tenant improvement built on ground lease belonged to the lessor for purposes of Proposition 13 since the lessor gained ownership at the end of the lease term].) The facts presented in the Court of Appeal's letter makes it clear that, in this case, the Lessee owns the improvement. Therefore, pursuant to the Board's longstanding position, the hangar should be taxed in fee to its owner and not as part of the possessory interest.

Recommendation

For the reasons stated above, the Legal Department asks for the Board's authorization to file an amicus brief that will respond to the Court of Appeal's questions in a manner consistent both with California property tax law and with the Board's historic understanding of section 107, Property Tax Rule 20, and the quoted provisions set forth in the Board's AH 510.

Should you require additional information or have any questions, please contact Assistant Chief Counsel Robert Lambert at (916) 322-0437 or Tax Counsel IV Richard Moon at (949) 224-4830.

Approved:

Cynthia Bridges
Executive Director

RF:KC:th

Attachments:
1. Letter from Court of Appeal
2. Property Tax Annotation 660.0120
3. Letter to Assessors 1980/048

STATE BOARD OF EQUALIZATION

BOARD APPROVED

At the November 19, 2014 Board Meeting

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

[5] Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

cc:	Ms. Cynthia Bridges	MIC: 73
	Mr. Robert Lambert	MIC: 82
	Mr. Robert Tucker	MIC: 82
	Mr. Richard Moon	MIC: 82
	Ms. Kiren Chohan	MIC: 82

JOSEPH A. LANE
CLERK OF THE COURT/ADMINISTRATOR

DANIEL P. POTTER
ASSISTANT CLERK/ADMINISTRATOR

Court of Appeal

STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

300 SOUTH SPRING STREET
SECOND FLOOR, NORTH TOWER
LOS ANGELES, CALIFORNIA
90013
(213) 830-7000

October 17, 2014

VIA U.S. MAIL

State Board of Equalization
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Sacramento, CA 94279

Howard Jarvis Taxpayers Association
621 South Westmoreland Ave., Suite 202
Los Angeles, CA 90005

John F. Krattli, County Counsel
Albert Ramseyer, Deputy County Counsel
Office of the County Counsel
648 Kenneth Hahn Hall of Administration
Los Angeles, CA 90012

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11949 Jefferson Blvd., Suite 104
Culver City, CA 90230

RE: *Seibold v. County of Los Angeles*
2d Civil No. B253701, L.A.S.C. No. SC107640

Dear counsel and prospective amici curiae:

This appeal involves the assessment of a privately-owned improvement on tax-exempt public land as a taxable possessory interest under Revenue and Taxation Code section 107 and Property Tax Rule 20 (Cal. Code Regs., tit. 18, § 20).[1] The improvement was constructed by the private owner pursuant to a lease with the public entity. The improvement will not become the public entity's property at the end of the lease term.

The court must determine whether such an improvement constitutes a "possessory interest" under the definition supplied by section 107, subdivision (b) and Rule 20(a)(3). Section 107, subdivision (b) states: " 'Possessory interests' means the following: . . . [¶] (b) Taxable improvements on tax-exempt land." Rule 20(a)(3) provides an identical definition: " 'Possessory interests' are interests in real property that exist as a result of: . . . [¶] (3) Taxable improvements on tax-exempt land."

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[1] Subsequent statutory references are to the Revenue and Taxation Code, unless otherwise specified.

The purpose of this letter is to solicit the views of interested parties with expertise in this area and to invite those parties to participate as amicus curiae in these proceedings. By way of background, the factual and procedural context in which this issue has arisen is as follows:

In February 1995, Gunter Seibold entered into a month-to-month lease with the City of Santa Monica to utilize certain portions of the Santa Monica Municipal Airport for a hangar to store his aircraft. Pursuant to the lease terms, Seibold was to construct and maintain a hangar at his own cost and expense on the leased premises.

Seibold's right to sell or otherwise dispose of the hangar is subject to Santa Monica's Hangar Public Access Program (the HPAP). In the event the lease is terminated or Seibold otherwise decides to sell his hangar, the HPAP requires Seibold to sell the hangar to a buyer on a public waiting list at a price set by the HPAP. If no buyer is secured, the HPAP gives Seibold the option of removing the hangar.

In December 2008, the assessor for Los Angeles County notified Seibold that the County had imposed escape assessments for tax years 2005 through 2008 based on "a creation, renewal, or assignment of your lease, or the addition or alteration of land and/or improvements occurring on your possessory interest as of December 26, 2005." Adjusted property tax bills for the same tax years each stated that the escape assessments were for "POSS INT DESC AS HANGAR H236 GROUND LEASE WITH S MONICA CITY AIRPORT."

Seibold paid the taxes and filed applications for reduced assessments with the Los Angeles County Assessment Appeals Board challenging the escape assessments. He also elected to designate the applications as claims for refund. The Appeals Board rejected Seibold's challenges, determining that the ground lease and the hangar each constituted a possessory interest in government-owned real property under section 107 and Rule 20.

In April 2010, Seibold filed a complaint against the County for a refund of possessory interest taxes paid for the hangar and ground lease.[2] Thereafter, Seibold moved for summary adjudication with respect to the hangar, based on the following undisputed facts: (1) Seibold privately owns the hangar; (2) the hangar is not owned by a public entity; and (3) the hangar will not become property of a public entity upon termination of the lease.

The trial court granted Seibold's motion for summary adjudication with respect to the hangar. In doing so, the trial court relied exclusively upon the following statement from section 510 of the State Board of Equalization Assessors' Handbook: "[I]mprovements owned by the possessor that do not become the property of the public owner at the end of the term of possession fail the ownership test of Rule 20(a)(1) and,

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[2] The court does not request amicus curiae briefing concerning the ground lease.

thus, are not taxable possessory interests." (Bd. of Equalization, Assessors' Handbook, § 510, Assessment of Taxable Possessory Interests (2002 rev.) p. 6.)

As noted at the outset of this letter, the court must determine whether the privately-owned hangar, which does not become the property of a public entity at the end of Seibold's lease term, is taxable as a possessory interest under section 107, subdivision (b) and Rule 20.

Section 107 appears to define the term " 'Possessory Interests' " in two mutually exclusive ways. Under section 107, subdivision (a), " 'Possessory interests' means . . . [¶] (a) Possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in the property, except when coupled with ownership of the land or improvements in the same person." Under section 107, subdivision (b), " 'Possessory interests' means . . . [¶] (b) Taxable improvements on tax-exempt land."

In similar fashion, Rule 20 provides three mutually exclusive definitions: " 'Possessory interests' are interests in real property that exist as a result of: [¶] (1) A possession of real property that is independent, durable, and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with ownership of a fee simple or life estate in the real property in the same person; *or* [¶] (2) A right to the possession of real property, or a claim to a right to the possession of real property, that is independent, durable, and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with ownership of a fee simple or life estate in the real property in the same person; *or* [¶] (3) Taxable improvements on tax-exempt land." (Cal. Code Regs., tit. 18, § 20, subd. (a), italics added.)

In this case, under a plain reading of section 107, subdivision (b) and Rule 20(a)(3), it appears that the hangar qualifies as a possessory interest—that is, the hangar is a taxable privately-owned improvement on tax-exempt public land. (See also § 2188.2 [providing for the separate assessment of improvements owned by a person other than the owner of the land].) However, no case of which the court is aware has applied this definition to affirm a possessory interest tax assessment based on private ownership of an improvement on public land. (But see *People v. Shearer* (1866) 30 Cal. 645, 655-657 [predating section 107, and recognizing, "[s]uch possession of the public lands, and the improvements put upon them, are, therefore, recognized and protected as a valuable species of property in the possessor"]; *Outer Harbor Dock & Wharf Co. v. County of Los Angeles* (1920) 47 Cal.App. 194, 196 ["though the land may be exempt from taxation because it belongs to the city, to the state or to the United States, yet improvements made thereon by an individual for his own use and benefit are subject to assessment and taxation"].)

Furthermore, despite the use of the disjunctive in Rule 20(a), the State Board of Equalization Assessors' Handbook appears to apply Rule 20(a)(1)'s separate ownership requirement to Rule 20(a)(3)'s definition of possessory interest. To quote the relevant portion from the Assessors' Handbook discussing Rule 20(a)(3):

> "The rule then states that a possessory interest includes 'taxable improvements on tax-exempt land.' This refers to privately owned improvements constructed or owned by the possessor (i.e., not the public owner) on the land subject to the taxable possessory interest. According to this provision a possessory interest includes all improvements constructed pursuant to a possessory interest in land *that become the property of the public owner at the termination of the possession*, whether the improvements are constructed at the possessor's or the public owner's expense. However, improvements owned by the possessor that do not become the property of the public owner at the end of the term of possession *fail the ownership test of Rule 20(a)(1)* and, thus, are not taxable possessory interests." (Bd. of Equalization, Assessors' Handbook, § 510, Assessment of Taxable Possessory Interests (2002 rev.) p. 6, italics added.)

As noted, the trial court relied upon the foregoing passage from the Assessors' Handbook to conclude the hangar did not constitute a possessory interest, because it was undisputed that the hangar would not become property of a public entity when Seibold's lease term expires. This court, however, is unable to find any statutory or common law authority for requiring reversion to a public entity when a taxable improvement on tax-exempt public land is assessed as a possessory interest under section 107, subdivision (b) and Rule 20(a)(3).

In view of the foregoing, the court requests input from the amici curiae on the following questions:

1. Does the hangar constitute a taxable possessory interest under the definition supplied by section 107, subdivision (b) and Rule 20(a)(3)?

2. Must the hangar become the property of a public entity at the end of Seibold's lease term to constitute a taxable possessory interest under the definition supplied by section 107, subdivision (b) and Rule 20(a)(3)?

3. Is there a statutory or common law basis for the requirement that the improvement "become the property of the public owner at the termination of the possession" as stated in section 510 of the Assessors' Handbook?

4. Is there a public policy basis for the requirement that the improvement "become the property of the public owner at the termination of the possession" as stated in section 510 of the Assessors' Handbook?

Prospective amici curiae are requested to advise this court by December 1, 2014 as to whether they intend to file amicus briefs, and if so, the date the court can expect to receive the briefs. In the event amicus briefs are filed, the parties shall have the opportunity to respond thereto within two weeks after the last amicus brief is filed. (Cal. Rules of Court, rule 8.200(c)(6).) Responses and briefs may be e-filed at: http://www.courts.ca.gov/8872.htm.

Very truly yours,

JOSEPH A. LANE, Clerk

Z. Clayton
Deputy Clerk

PSK/bc

(916) 324-6594

September 27, 1984

M

Dear M

This is in reply to your letter of August 31, 1984 to Richard Ochsner in which you ask the following:

> "Would you please provide the Sierra County Assessor's Office with a legal opinion as to the meaning of California Revenue and Taxation Code, Section 107(b). This office needs a legal analysis and definition as to what 'Taxable improvements on tax-exempt land' means.
>
> "Does this mean that a person who builds and owns improvements on federal land creates a taxable possessory interest in the improvements he apparently owns?
>
> "If there is a possessory interest in leasehold improvements constructed on leased federal land pursuant to Section 107(b), and if the land lease is renewed (renewal of possessory interest in land), do the improvements become appraisable pursuant to Section 61(b)?"

Revenue and Taxation Code Section 107(b) has not been defined by the courts, nor has it been defined specifically in Property Tax Rule 21. While it may be possible to develop a suitable definition through researching the legislative history of the section, I don't believe that is necessary in order to answer the questions raised in your letter. The key here, as indicated by Rule 21(a), is that a possessory interest in either land or improvements means "an interest in real property which exists as a result of possession, exclusive use,

or a right to possession or exclusive use of land and/or improvements unaccompanied by the ownership of a fee simple or life estate in the property ..." (Emphasis added.)

Thus, if a lessee (or permittee) of federal land constructs improvements thereon and retains ownership of a fee simple or life estate in the improvements, he does not have a possessory interest in the improvements, he does not have a possessory interest in the improvements and a renewal of the land lease would not trigger a reappraisal of the improvements. See Letter to Assessors No. 80/49, dated March 21, 1980, a copy of which is enclosed.

If, on the other hand, the improvements constructed by the lessee become the property of the government, the lessee would have a taxable possessory interest in the improvements and a renewal of the land lease would trigger a reappraisal of the possessory interest in both the land and improvements under Section 61 (b).

It is, therefore, necessary in such cases for the assessor to determine whether the improvements are owned by the lessee or by the government. To make this determination, the assessor will need to review the lease agreement. The lease may provide that at the expiration of the lease, all improvements of the lessee shall remain on the premises and become the property of the lessor in which case the lessee would have a possessory interest in the improvements. Or, the lease may permit or require the lessee to remove improvements he has made to the property at the expiration of the lease in which case the leasee would be the owner of the improvements rather than a possessory interest therein. If the lease agreement is silent on the subject, the general rule is that the lessor retains ownership of the improvements at the expiration of the lease. (Civil Code Section 1013.) One possible exception to the general rule is the trade fixture doctrine, which would permit a lessee to remove his trade fixtures at any time during the continuance of the lease. (Civil Code Section 1019.) The difficulty in applying this exception, of course, is determining to what extent lessee improvements can be characterized as trade fixtures. Enclosed for your further information is a copy of a letter from M_____ to the attention of M_____ dated _____ concerning the question of the ownership of improvements.

If we can be of further assistance to you in determining the ownership of improvements in any particular instance, please let us know.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

EFE:fr

Enclosures

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
220 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)
(916) 445-4982

No. 80/48

March 21, 1980

TO COUNTY ASSESSORS:

POSSESSORY INTERESTS

Here are the answers to several frequently asked questions concerning possessory interests.

If you have further questions on these matters, contact John McCoy or Don Ide in the Real Property Technical Assistance Section, (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:sk
Enclosure

QUESTIONS AND ANSWERS PERTAINING TO POSSESSORY INTEREST APPRAISALS

1. QUESTION: Do concessionaires, who have contracts with public schools, community colleges, state colleges, and state universities and who provide food service to students on school properties have taxable possessory interests?

   ANSWER: Historically, the Board has taken the position that concessionaires providing food service, i.e., restaurants, cafeterias, vending facilities, and on-campus catering to public schools, have taxable possessory interests. However, property used exclusively for public schools, community colleges, state colleges, and state universities is exempt from property taxation under Article XIII, Section 3(d) of the Constitution. Because of several recent court decisions, we now conclude that property used by concessionaires exclusively for providing food service to public schools, etc., is eligible for that exemption.

2. QUESTION: Are nongovernment-owned improvements located on tax-exempt, government-owned lands subject to reappraisal under Revenue and Taxation Code Section 61(b) when possessory interests in the lands are created, renewed, subleased, or assigned?

   ANSWER: Under Section 61(b), a change of ownership requiring reappraisal occurs upon the creation, renewal, sublease, or assignment of a taxable possessory interest in tax-exempt real property. Where improvements are privately owned and do not revert to the government, only the possessory interests in the lands are to be reappraised.

3. QUESTION: Do tenants of government-owned, "low-income housing" projects have taxable possessory interests?

   ANSWER: No. The courts have determined that no taxable possessory interests exist in the use of government-owned housing by low-income persons residing therein.

4. QUESTION: Do blind vendors who operate vending facilities in public buildings have taxable possessory interests?

   ANSWER: In our opinion no taxable possessory interests exist in the use of public buildings by blind vendors who operate the vending facilities. The legal interest granted is a mere license to operate a vending facility, and in Mattson v. County of Contra Costa (1968), 258 Cal. App. 2d 205, the Court implied that a mere license is not a possessory interest.

March 21, 1980